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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,740	11/13/2000	Janine Whan-Tong	PREC115319	8465

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EXAMINER

CROW, STEPHEN R

ART UNIT PAPER NUMBER

3764

17

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/711,740

Applicant(s)

WHAN-TONG ET AL.

Examiner

Steve R Crow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-56 is/are pending in the application.
4a) Of the above claim(s) 30-35, 39-46, 48, 50 and 52-56 is/are withdrawn from consideration.
5) ☒ Claim(s) 25 and 26 is/are allowed.
6) ☒ Claim(s) 22-24, 27-29, 36-38, 47, 49, 51 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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I. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

II. Claims 22-24,27-29,36-38,47,49,51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (829) in view of Breunig.

Miller discloses an elliptical exercise machine similar to applicant's claimed invention except for means for height adjustment of the guide 32 shown in figure 5.

Breunig discloses an exercise device having an upright 44 which employs a linkage 46 which moves up and down a screw for changing the inclination of the guide 25. In view of this teaching, it would have been obvious to one skilled in the exercise art to provide the Breunig type inclination adjustment mechanism in the Miller device for guide height adjustment for providing different exercise resistances.

1. Claims 22,23,27-29,36-38,47,49,51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Pasier et al .

Pasier et al discloses an exercise device having a conceptually similar reciprocating foot supports and a frame having an upright and ground engaging means, wherein a pyramid shaped block 20 is utilized to increase exercise resistance by changing the inclination or orientation of foot supports carried by the foot links to more closely simulate the slope of the ground. Given this

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teaching, it would have been obvious to one skilled in the art to provide a base member in the Miller device for changing the inclination or orientation of the Miller foot supports carried by the foot links to more closely simulate the slope of the ground and affect the resistance to reciprocation of the foot supports.

Allowable Subject Matter

2. Claims 25,26,48 are allowed.

Response to Amendment

3. The Affidavits filed on 3-29-04 under 37 CFR 1.131 is sufficient to overcome the Wang reference.

Response to Arguments

III. Applicant's arguments filed 3-29-04 have been fully considered but they are not persuasive.

The fact that Breunig's tracks remain parallel is not relevant. Breunig utilizes a lifting system which changes the slope of the tracks to effect a desirable change in the resistance due to gravity. Likewise, the examiner has relied upon the Breunig device to teach changing the slope of the Miller tracks to effect a desirable change in the resistance due to gravity. It is noted that the orientations of Breunig's user and applicant's user remains generally the same, only the inclination changes.

Please note, as supported by the prior art cited, e.g., Lan (858), that there are numerous exercise devices which utilize a front upright upon which a guide means is height adjustable in order to change the guide means angle and affect the resistance to movement of a person on a reciprocating means.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R Crow whose telephone number is 709-308-3398. The examiner can normally be reached on Off First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4520 for regular communications and 703-306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.



STEPHEN R. CROW
PRIMARY EXAMINER
ART UNIT 332